

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Robert M. Charles Jr. NV State Bar No. 006593
Email: rcharles@lrlaw.com
John C. Hinderaker AZ State Bar No. 18024
Email: jhinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,

Debtors.

Case No. BK-S-06-10725-LBR

CHAPTER 11

**OBJECTION OF THE USACM
LIQUIDATING TRUST TO PROOFS OF
CLAIM FILED BY LAMOINE AND LOIS
MURRAY FOR CLAIM NOS. 10725-00443,
AND 10725-00608 FOR DUPLICATIVE
CLAIMS AND LACK OF SUPPORTING
DOCUMENTATION; AND CERTIFICATE
OF SERVICE**

Hearing Date: October 18, 2011
Hearing Time: 1:30 p.m.
Estimated Time for Hearing: 5 Minutes

The USACM Liquidating Trust (the "USACM Trust") objects to Proof of Claim No 10725-00443 filed by Lamoine Murray & Lois H Murray and Proof of Claim No. 10725-00608 filed by Lamoine Murray. These claims will be henceforth referred to as the (the "Murray Claims"). The USACM Trust objects to The Murray Claims for Duplicative Claim and Lack of Documentation ("Objection"). Claim No. 10725-00443 was filed on October 5, 2006 and Claim No. 10725-00608 was filed on October 16, 2006 both claims were filed in the amount of \$178,867.00, therefore Claim No. 10725-00608 is duplicative of Claim No. 10725-00433. Pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure

(the “Bankruptcy Rules”), the USACM Trust moves the Court to disallow the Murray Claim No. 10725-00608 on the ground it is duplicative and disallow Murray Claims No. 10725-00443 and 10725-00608 on the ground of lack of supporting documentation. Simply put, the Trust cannot tell what the claims are about. This Objection is supported by the Court’s record, and explained in the following Memorandum.

I JURISDICTION

1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

2. The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.

II. BACKGROUND

a. The USACM Bankruptcy

On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Debtor’s post-petition management of the Debtor was under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC, who served as the Chief Restructuring Officer.

USACM was a Nevada corporation that, prior to the Petition Date, was in the business of underwriting, originating, brokering, funding and servicing commercial loans primarily secured by real estate, both on behalf of investors and in limited instances for its own account. That business included the solicitation of investors to purchase fractional interest in loans that USACM originated and then serviced. These investors are referred to as “Direct Lenders” in USACM’s bankruptcy case and in this Objection.

On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No. 2376]. Pursuant to the Plan, those assets which were not sold to Compass Partners, LLC and Compass Financial Partners, LLC, vested in the USACM Trust, which existed as of the Plan’s March 12, 2007 Effective Date. Geoffrey L. Berman is the Trustee of the USACM Trust. Under the Plan, the USACM Trust is the successor to USACM with respect to standing to seek allowance and disallowance of Claims under 11 U.S.C. § 502(a).

III. APPLICABLE AUTHORITY

Under the Bankruptcy Code, any Claim for which a proof of claim has been filed will be allowed unless a party in interest objects. If a party in interest objects to the proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim and shall allow the Claim except to the extent that the Claim is “unenforceable against the debtor . . . under any . . . applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof of claim controverts the presumption, the creditor ultimately bears the burden of persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996).

IV. OBJECTIONS TO CLAIMS

1. The USACM Trust objects to The Murray Claims for Lack of Documentation, and, additionally, to Claim No. 10725-00608 as duplicative of Claim No. 10725-00433. The USACM Trust asks the Court to disallow the Murray Claims in full.

2. The USACM Trust reserves the right to modify, supplement and/or amend

1 this Objection as it pertains to any Claim or claimant herein. As required by Nevada LR
2 3007, a copy of the first page of the proofs of claim at issue are attached as Exhibit A
3

4 **V. CONCLUSION**

5 For the reasons discussed above, the USACM Trust objects to Claim Nos. 10725-
6 00443 and 10725-00608 for lack of documentation and objects to Claim No. 10725-00608
7 on the ground that it is duplicative. The USACM Trust requests that the Court disallow the
8 claims in full. The USACM Trust also requests such other and further relief as is just and
9 proper.

10 Dated: September 13, 2011.

11 LEWIS AND ROCA LLP

12
13 By /s/ John Hinderaker (AZ 18024)

14 Robert M. Charles, Jr., NV 6593

15 John Hinderaker, AZ 18024 (*pro hac vice*)

16 Marvin Ruth, NV 10979

17 3993 Howard Hughes Parkway, Suite 600

18 Las Vegas, Nevada 89169

19 E-mail: JHinderaker@LRLaw.com

20 Attorneys for the USACM Liquidating Trust

21 Copy of the foregoing and pertinent
22 portion of Exhibits mailed by First
23 Class postage prepaid U.S. Mail on
24 September 13, 2011 to:

25 Lamoine Murray and Lois H Murray
26 4934 Larkspur Ln
Ogden, UT 84403-4426

/s/ Matt Burns

Matt Burns, Paralegal

Lewis and Roca LLP